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after the occurrence. *Brauer v. New York Ry.* (1909) 131 App. Div. 682, 116 N. Y. Supp. 59. On the other hand a comparatively recent Washington case held that it was proper to admit statements made by an employee about two hours after the accident. *Walters v. Spokane Ry.* (1910) 58 Wash. 293, 108 Pac. 593. Under the spontaneous exclamation theory the running away in the instant case might have been considered as equivalent to a statement made under the influence of nervous excitement induced by a startling occurrence. In this class of cases it is not necessary that the statement be made contemporaneously with the act. *St. Laurent v. Manchester Ry.* (1915) 77 N. H. 460, 92 Atl. 959; *Lambrecht v. Schreyer* (1915) 129 Minn. 271, 152 N. W. 645. Whether a given statement under the particular circumstances was made contemporaneously with the act or under the stress of nervous excitement, should be left largely to the discretion of the trial court. See *Washington-Virginia Ry. v. Deahl* (1919) 126 Va. 141, 147, 100 S. E. 840, 842; *Lambrecht v. Schreyer, supra.* It is submitted, therefore, that the ruling of the trial court in the instant case should have been permitted to stand.

TRUSTS—RESULTING TRUSTS IN MORTGAGES.—The plaintiff mortgaged land to a stranger. The land was sold on a foreclosure sale to an investment company. The plaintiff not having the means to redeem the land, the defendant advanced a portion of the money. There was no evidence as to the intention of the parties at the time of the redemption respecting the interest, if any, which the defendant was to take. The plaintiff brought a bill for a decree quieting title in himself. The lower court, on the theory of a resulting trust, decreed that the defendant had title to an undivided share of the land, proportional to the sum which he had advanced. *Held,* reversing the lower court, that a decree should be entered quieting title to all of the land in the plaintiff. *Cochran v. Cochran* (1921, Wash.) 195 Pac. 224.

Under the facts of this case there may well have been an intention by the parties to regard the advancement made by the defendant as a mere loan. The decision was not based on this ground, however. In Washington a mortgage is a mere lien upon the realty and the mortgagor retains the legal title even after the foreclosure sale and until his period of redemption expires. The decision rests upon the theory that, where property is taken in the name of one person and the consideration is paid by another, a resulting trust comes into existence only where a legal title passes as a result of the purchase. Under the common-law theory of a mortgage, whereby the legal title passes to the mortgagee, a resulting trust arises under such circumstances. *Kelly v. Jenness* (1862) 50 Me. 455; *Tillman v. Murrell* (1898) 120 Ala. 239, 24 So. 712. Where a mere equitable claim is bought by one and the title taken in the name of another, a resulting trust does not arise, there "being no legal title to which the equitable title can attach itself." *Livingston v. Murphy* (1905) 187 Mass. 315, 72 N. E. 1012; *Boyer v. Floury* (1888) 80 Ga. 312, 5 S. E. 63; *contra, Munch v. Shabel* (1877) 37 Mich. 166. Since there can be a trust of an equitable interest, it is difficult to see the necessity for the transfer of a legal interest to create a resulting trust. Under the lien theory of mortgages, where a resulting trust operates to make the mortgagor the beneficiary and so to extinguish the mortgage, the courts allow such a trust to be set up. *Smith v. Balcom* (1897) 24 App. Div. 437, 48 N. Y. Supp. 487. And where to set up a resulting trust of a lien created by mortgage will make a stranger the trustee and the person furnishing the consideration the mortgagee, the trust is upheld. *Hanrion v. Hanrion* (1906) 73 Kan. 25, 84 Pac. 381; *In re Tobin's Estate* (1909) 139 Wis. 494, 121 N. W. 144. In the instant case the fact that if a resulting trust is set up the trustee will be the mortgagor, should be immaterial. He holds the legal title in his own interest and the lien created by the mortgage only in his capacity as a passive trustee. He is a mere conduit through which the legal powers represented by the lien pass to the one paying the consideration. The purposes of a resulting trust—to

avoid unjust enrichment and to carry out the presumed intention of the parties—are as necessary and are as fully accomplished in such a case as if the legal title to the land had passed. Therefore it would seem that a resulting trust in a mortgage in a lien theory state might well be sustained.

WILLS—CONSTRUCTION—ESTATE IN FEE CREATED BY DEVISE WITH UNLIMITED POWER OF DISPOSAL DURING LIFE.—A testator devised his real and personal property to a woman to be used by her during her life with full powers of alienation, and upon her decease without issue whatever remained unused was to revert to the testator's estate. *Held,* that the devisee takes an estate in fee. Sharpe and Clark, JJ., *dissenting. Gibson v. Gibson* (1921, Mich.) 181 N. W. 41.

In the construction of a will the intention of the testator, as expressed by the words of the entire instrument, prevails, provided it be within the rules of law, one of which is that no limitation over after a fee simple estate is valid. *Smith v. Bell* (1832, U. S.) 6 Pet. 68. Due to the vague phraseology of wills, the cases often are confusing as to the estate devised, and the intention of the testator is exceedingly difficult to determine. For the purpose of analysis, the decisions may be classified as follows: (1) "To A for life with unrestricted power of disposal." Here a life estate is expressly devised, and by the great weight of authority, the addition of an unrestricted power of disposal does not enlarge the estate to a fee. Any remainders over are therefore valid. *Steiff v. Seibert* (1905) 128 Iowa, 746, 105 N. W. 328, 6 L. R. A. (N. S.) 1186, note; but see *contra, Barnett v. Blain* (1919) 126 Va. 179, 101 S. E. 239. (2) "To A with restricted power of disposal." This is a general devise, but the limited power of alienation shows an intention to pass less than a fee and the devisee therefore takes only a life estate. *Gadd v. Stoner* (1897) 113 Mich. 689, 71 N. W. 1111. (3) "To A with unrestricted power of disposal." Here any implication of a life estate is destroyed by the unlimited power of disposal, and the devisee takes a fee simple estate. *Henderson v. McCowan* (1920, N. J. Eq.) 110 Atl. 517. But a few cases hold that where the testator has provided a remainder over after such a general devise, his intention is to give the first devisee only a life estate. *Smith v. Bell, supra; Robinson v. Finch* (1898) 116 Mich. 180, 74 N. W. 472. Statutes in most states specifically provide that a general devise without words of inheritance will pass a fee unless it clearly appears that the intention of the testator was to create a lesser estate. Mich. Comp. Laws, 1915, sec. 11818; see *Bilger v. Nunan* (1911, C. C. D. Ore.) 186 Fed. 665. (4) "To A with unrestricted power of disposal for her natural life." Where there is no remainder over, the devisee takes a fee, since the courts are opposed to partial intestacy. *In re Weien's Will* (1908) 139 Iowa, 657, 116 N. W. 791, 18 L. R. A. (N. S.) 463, note; *In re Hardaker's Estate* (1902) 204 Pa. 181, 53 Atl. 761. Where there is a remainder, there seem to be two distinct lines of cases. Under one theory the devisee gets only a life estate and the remainder over is valid. Thus in effect there is an express life estate with an unrestricted power of disposal and a remainder over. *Walker v. Pritchard* (1887) 121 Ill. 221, 12 N. E. 336; *Perkinson v. Clarke* (1908) 135 Wis. 584, 116 N. W. 229; see Kales, *Future Interests* (2d ed. 1920) sec. 168. The other view has evidently developed as a result of the statutes which raise a presumption of an estate in fee. The courts hold that in the above limitation it does not *clearly* appear that the testator intended to restrict the devisee to a life estate, since even were the devise expressly in fee, the devisee would have no greater powers. *Roberts v. Lewis* (1894) 153 U. S. 367, 14 Sup. Ct. 945; *Bilger v. Nunan, supra; Luckey v. McCray* (1904) 125 Iowa, 691, 101 N. W. 516. The instant case follows this latter view which, it seems, fails to take into account the intention of the testator as it appears from the entire will. The reasoning would apply as well to an express life estate with unrestricted power of disposal and remainder over.